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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,600	11/14/2000	Victor T. Chen	044407:0684	3680

7590 05/16/2003

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EXAMINER	
OROPEZA, FRANCES P	

ART UNIT	PAPER NUMBER
3762	13

DATE MAILED: 05/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

GL

Office Action Summary	Application No.	Applicant(s)	
	09/712,600	CHEN ET AL.	
	Examiner	Art Unit	
	Frances P. Oropeza	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *4/14/03 (Amendment)* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-31, 33-59 and 62-65* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1, 3-31, 33-59 and 62-65* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1, 3-13, 30-31 and 33-43, drawn to a method/ device for pacing therapy to distinguish between two types of supra-ventricular tachycardia, classified in class 607, subclass 009.

II. Claims 14-21, 44-52 and 62, drawn to a method/ device for providing pacing therapy to distinguish between fast atrial flutter and slower rate supra-ventricular tachycardia, classified in class 607, subclass 009.

III. Claims 22-29, drawn to a method for distinguishing between different types of rapid regular supra-ventricular tachycardia comprising establishing an atrial discrimination algorithm, classified in class 607, subclass 009.

IV. Claims 53-59, drawn to an implantable cardiac device comprising a dual chamber bradycardia pacer for providing pacing pulse to the ventricles, classified in class 607, subclass 009.

V. Claim 63, drawn to a device for applying an algorithm to compare fast atrial flutter at a first high rate and another atrial flutter at a second lower rate, classified in class 600, subclass 515.

VI. Claims 64-65, drawn to a method for providing therapy to a heart comprising providing an atrial pacing therapy and a ventricular pacing therapy for the first and second types of tachycardia respectively, classified in class 607, subclass 009.

Inventions I. and II. are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I. has separate utility such as a method/ device for providing pacing therapy not requiring the regular rapid supra-ventricular rates to include fast atrial flutter and a slower rate supra-ventricular tachycardia. See MPEP § 806.05(d).

Inventions I. and II. and inventions III., IV. and V. are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, inventions I. and II. have separate utility such as a method/ device for providing pacing therapy not requiring applying an atrial discrimination algorithm. See MPEP § 806.05(d).

Inventions I. and II. and invention VI. are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, inventions I. and II. have separate utility such as a method/ device for providing pacing therapy not requiring determining that an atrial rate is above a predetermine atrial tracking rate for performing ventricular pacing such that the atrial rate is higher than the ventricular rate. See MPEP § 806.05(d).

Inventions III. and IV. are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case invention III., the method for distinguishing between different types of rapid regular supra-ventricular tachycardia can be practiced by a pacer not requiring the dual chamber bradycardia pacing mode.

Inventions III. and V. are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case invention V., the implantable cardiac device can be used to practice another materially different process, a method not requiring that an atrial rate is above a predetermined atrial tracking rate for performing ventricular pacing such that the atrial rate is higher than the ventricular rate.

Inventions III. and VI. are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VI. has separate utility such as a method for providing therapy to a heart not requiring the establishment of an atrial discrimination algorithm. See MPEP § 806.05(d).

Inventions IV. and V. are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention IV. has separate utility such as an implantable cardiac device not requiring the discrimination between a fast atrial flutter at a first high rate and an other atrial flutter at a second lower rate. See MPEP § 806.05(d).

Inventions IV. and VI. are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case invention IV., the implantable cardiac device, can be used to practice another and materially different

process, a method not requiring that an atrial rate is above a predetermined atrial tracking rate for performing ventricular pacing such that the atrial rate is higher than the ventricular rate.

Invention VI. and inventions IV. and V. are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case inventions IV. and V., the implantable cardiac devices, can be used to practice another and materially different process, a method not requiring that an atrial rate is above a predetermined atrial tracking rate for performing ventricular pacing such that the atrial rate is higher than the ventricular rate.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and/ or their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

The Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza, telephone number is (703) 605-4355. The Examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4520 for regular communication and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist, telephone number is (703) 308-0858.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

FPO
5/16/03

Angela D. Sykes

ANGELA D. SYKES
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